

Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632

8-342A010

No. **9826**

RECORDATION NO. **9826** Filed 1425

Date **NOV 8 1978**

Fee \$ **50.00**

NOV 8 1978-8 10 AM

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION November 7, 1978

RECEIVED
NOV 8 8 07 AM '78
FEE OPERATION BR.
I.C.C.

Mrs. Mildred Lee
Recordation Dept.
Interstate Commerce Commission
Room 1227
12th and Constitution Ave., N.W.
Washington, D. C. 20423

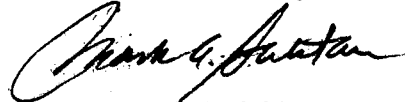
Dear Mrs. Lee:

Please find enclosed an original and two copies of a certain PURCHASE AGREEMENT dated October 15, 1978 between FMC Corporation, a Delaware corporation of Portland, Oregon, and Rex Railways, Inc., a New Jersey corporation, Englewood Cliffs, New Jersey. This Agreement covers 200 new boxcars with road numbers VTR 12001-12200 inclusive.

Also enclosed is a check in the sum of \$50 to the order of Interstate Commerce Commission for recording said Agreement.

Please return to my office the official recording receipt. I would greatly appreciate your recording this Agreement on delivery to you as early in the morning of November 8 as possible and verifying the recording number to any party that calls you for this information. Thanking you once again for all best courtesies.

Most cordially yours,



Mark A. Salitan
Chairman

Encl.

Interstate Commerce Commission
Washington, D.C. 20423

11/9/78

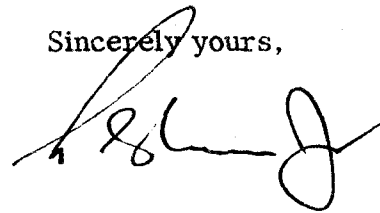
OFFICE OF THE SECRETARY

Mark A. Salitan, Chairman
Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 11/8/78 at 8:10am ,
and assigned recordation number(s) 9826

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

NOV 8 1978-8 10 AM

INTERSTATE COMMERCE COMMISSION

This PURCHASE AGREEMENT, dated as of October 15, 1978, by and between FMC Corporation, a Delaware corporation (hereinafter called the "Manufacturer"), and Rex Railways, Inc., a New Jersey corporation (hereinafter called "Vendee").

W I T N E S S E T H

The Manufacturer and the Vendee have entered into a Purchase Order whereby the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 1, of Schedule A and the Vendee has agreed to accept and pay for the Railroad Equipment (hereinafter individually called a Car and collectively called the "Cars") described in Section 2, of Schedule A; and

Inasmuch as the Vendee does not wish to pay for the Cars prior to shipment of the Cars from the Manufacturer's plant, the Vendee has requested the Manufacturer to give the Vendee, or third persons to whom the Vendee has resold the Cars and on behalf of whom the Vendee acts as agent, title and possession to the Cars on delivery, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. When the purchase price of all of the Cars has been paid, this Agreement shall automatically be terminated and upon receipt of payment for a Car, the Manufacturer's purchase money security interest as to such Car shall automatically terminate without further action by or notice to any party. On delivery of each Car to the Vendee, the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Order, he will execute and deliver to the Manufacturer a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to each Car shall pass to the Vendee upon the receipt by the Manufacturer of such a certificate of acceptance with respect thereto; provided, however, that the Manufacturer shall retain a purchase money security interest

in each Car until it has received payment in full for such Car. It is recognized that the Vendee may, prior to the delivery of a Car, have sold all of its rights, title and interest in such Car (which it holds pursuant to this Agreement and its purchase order) to a third person for whom it will act as agent in managing such Car. With respect to any such Car sold by the Vendee to any such third person, title to such Car shall pass directly to such third person upon receipt by the Manufacturer of a certificate of acceptance with respect to such Car acknowledging receipt of delivery of such Car by the Vendee as agent on behalf of such third person; provided, however, that, as in the case of passage of title of a Car to the Vendee, the Manufacturer shall retain a purchase money security interest in such Car until it has received payment in full for such Car. Such passage of title to such third person shall not affect in any way the rights or obligations of the Vendee under this Agreement. The Manufacturer shall execute and deliver to the Vendee (or such third person as the case may be) a bill of sale confirming the earlier transfer of title upon delivery of the Cars, free from all liens and encumbrances created by the Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by the Vendee or such third persons of any of its rights against the Manufacturer under the warranties contained in Schedule B to this Agreement. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the former Interstate Commerce Act as confirmed under the Act of October 17, 1978, Pub.L.No. 95-473. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's security interest in the Cars.

3. Subject to the warranties in Schedule B, Vendee agrees that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties


that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of the ownership, use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and (subject to the warranties in Schedule B) will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement, if not theretofore paid.

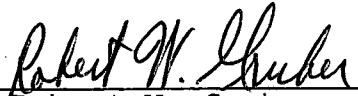
5. Prior to the delivery of each Car to the Vendee, such Car will be numbered with a car number as set forth in Section 2 of Schedule A, and there shall be plainly, distinctly, permanently and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 4, of Schedule A.


6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars.

7. The Manufacturer shall be entitled to all the rights of a secured party under the Uniform Commercial Code of Oregon and the Act of October 17, 1978, Pub.L.No. 95-473, Section 20c of the former Interstate Commerce Act as in effect at any time during which it retains a security interest in the Cars hereunder.

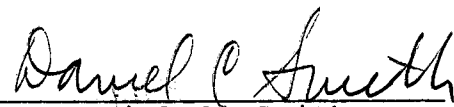
(Corporate Seal)
ATTEST:

Secretary

REX RAILWAYS, INC.

By: 
Robert W. Gruber
President

(Corporate Seal)
ATTEST:

Assistant Secretary

FMC CORPORATION

By: 
Daniel C. Smith
Vice President

SCHEDULE A

SECTION 1. Delivery Point

Manufacturer's Plant.

SECTION 2. Railroad Equipment

200 70 Ton 50'6" Box Cars - VTR 12001-12200 Incl.

SECTION 3. Purchase Price

\$35,343 per car, F.O.B. Manufacturer's plant, Portland, Oregon.

SECTION 4. Markings on Cars

Rex Railways, Inc., Agent for Owner and Lessor, pursuant to a lease recorded under Section 20c of Interstate Commerce Act. Title to this car subject to documents recorded under said Section 20c.

SCHEDULE B

WARRANTY: The Carbuilder's warranty is limited to repair of any defective part or parts found to Carbuilder's satisfaction to be defective on examination by it, provided such part or parts shall, within one year after delivery of the equipment have been returned, freight prepaid, to the Carbuilder's plant or such other place reasonably convenient to the purchaser as shall be designated by the Carbuilder. Any article or material specified by the purchaser and not manufactured by the Carbuilder shall be covered only by the warranty, if any, of its manufacturer.

This warranty is made expressly and in lieu of all other warranties expressed or implied, and the Carbuilder specifically disclaims any implied warranty of merchantability or fitness for a particular purpose. The purchaser's exclusive and sole remedy on account or in respect to furnishing of equipment that does not conform to the purchaser's specification shall be to secure replacement thereof as aforesaid. The Carbuilder shall not in any event be liable for the cost of any labor expended by anyone other than Carbuilder on any such equipment, or for any special, direct, indirect, incidental or consequential damages to anyone.

STATE OF ILLINOIS }
COUNTY OF COOK } SS

On this 6th day of November, 1978, before me personally appeared Daniel C. Smith, to me personally known, who being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Karen Nelson
Notary Public

(Notarial Seal)

My Commission expires 09/23/79

STATE OF NEW JERSEY }
COUNTY OF BERGEN } SS

On this 7th day of Nov, 1978, before me personally appeared Robert W. Laber, to me personally known, who being by me duly sworn, says that he is a President of REX RAILWAYS, INC., that one of the seals affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rubin Schertz
Notary Public

(Notarial Seal)

My Commission expires

— RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
Commission Expires May 4, 1982